



PATENT
Customer No. 22,852
Attorney Docket No. 05725.1017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)
)
Jean-Louis H. GUERET) Group Art Unit: 3751
)
Application No.: 10/060,234) Examiner: Huyen Le
)
Filed: February 1, 2002)
)
For: DEVICE FOR APPLYING A) Confirmation No.: 8084
PRODUCT)

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

TRANSMITTAL OF APPEAL BRIEF (37 C.F.R. 41.37)

Transmitted herewith is the APPEAL BRIEF in this application with respect to the
Notice of Appeal filed on August 14, 2006.

This application is on behalf of a Large Entity and, pursuant to 37 C.F.R.
§ 41.20(b)(2), the fee for filing the Appeal Brief is \$500.00. This fee of \$500.00,
however, was previously paid on May 24, 2005, and that payment should be applied to
this Appeal Brief in accordance with M.P.E.P. § 1204.01.

If any extension of time is necessary for the filing of this Appeal Brief, and such
extension has not otherwise been requested, such an extension is hereby requested,
and the Commissioner is authorized to charge necessary fees for such an extension to
our Deposit Account No. 06-0916.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: October 2, 2006

By: 
Anthony M. Gutowski
Reg. No. 38,742



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Sir:

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

This is an appeal to the Board of Patent Appeals and Interferences ("the Board") from the Office Action dated April 14, 2006 ("Office Action"), rejecting claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212, in the above-referenced patent application. Appellant submits this Appeal Brief pursuant to 37 C.F.R. § 41.37. The required appeal brief fee of \$500.00 was previously paid on May 24, 2005 and should be applied to this Appeal Brief in accordance with M.P.E.P. § 1204.01.

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A Notice of Appeal was filed on August 11, 2006, and this Appeal Brief is being timely filed under 37 C.F.R. § 41.31.

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I. Real Party in Interest

The real party in interest is L'Oréal S.A., the assignee of the entire right, title, and interest in the application, as indicated by assignment duly recorded in the U.S. Patent and Trademark Office ("Office") at Real 012853, Frame 0978 on April 29, 2002.

II. Related Appeals and Interferences

Appellant, Appellant's legal representatives, and assignee are aware of no other appeals, interferences, or judicial proceedings that may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III. Status of Claims

Claims 1, 3-9, 11-83, 85-108, 110, 112-116, 118-121, 123-128, 130-133, 135-156, 158-182, 184-192, 194-199, 201-204, and 206-214 are pending in this application, with claims 1, 71, and 144 being independent. Of those pending claims, claims 18-21¹, 52-59, 68, 69, 92-95, 124-128, 130, 131, 142, 143, 165-168, 195-199, 201, 202, 213, and 214 have been withdrawn from consideration.

Claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 have been rejected at least twice by the Office, and the rejections applied to those claims are at issue in this appeal. Those rejected claims are set forth in an attached Appendix.

¹ The Office Action Summary of the Office Action dated April 14, 2006 and the Notice of Panel Decision from Pre-Appeal Brief Review dated August 29, 2006 indicate claims 8-21 as being withdrawn from consideration. As is clear from the record, however, claims 8, 9, and 11-17 have not been withdrawn from consideration. Therefore, Appellant will continue to treat claims 8, 9, and 11-17 as having been considered by the Examiner.

IV. Status of Amendments

No amendments under 37 C.F.R. § 1.116 have been filed subsequent or in response to the Office Action.

V. Summary of Claimed Subject Matter

A. Independent Claim 1

The subject matter set forth in claim 1 relates to a device 10 for applying a product comprising a first portion 20 defining a recess 22 and a second portion 30 moveable with respect to the first portion 20 so as to selectively place the device in one of a closed position (e.g., Figs. 1C, 2B, and 3D) and an open position (e.g., Figs. 1A, 2D, and 3A). Paragraphs [053], [061], and [068]; Figs. 1A-1C, 2A-2D, 3A-3D, and 5.² The first portion 20 and the second portion 30 may define a substantially closed reservoir 50 when the device 10 is in the closed position. Figs. 1C, 3D, and 4; paragraphs [053], [061], and [064]. The device 10 may further comprise an application member 40 attached to the second portion 30. Figs. 1A-1, 2C, 2D, and 3A; paragraphs [054], [061], and [065]. The application member 40 may be at least partially compressible and configured such that, when the device 10 is in the closed position, the application member 40 is at least partially compressed inside the substantially closed reservoir and, when the device 10 is moved from the closed position to the open position, the application member 40 becomes substantially uncompressed. Figs. 1A-1C, 3A, 3D, and 4; paragraphs [054], [055], [057], [061], and [066]. The application member 40 may also be configured so that when the application member 40 is uncompressed, the application member 40 is capable of being loaded with substantially all of an amount of product that the device 10 is capable of containing. Fig. 3C; paragraphs [058], [063], and [069].

² The references to the specification and drawings in this Brief are merely intended to facilitate explaining how the originally-filed application provides exemplary embodiments and exemplary disclosure relating to the claimed subject matter. Those references should not be construed as limiting the claims.

B. Independent Claim 71

The subject matter set forth in claim 32 relates to a device 10 for applying a product comprising a first portion 20 comprising an impermeable surface, the first portion 20 defining a recess 22, and a second portion 30 moveable with respect to the first portion 20 so as to selectively place the device 10 in one of a closed position (e.g., Figs. 1C, 2B, and 3D) and an open position (e.g., Figs. 1A, 2D, and 3A). Figs. 1A-1C, 2A-2D, 3A-3D, and 5; paragraphs [053], [061], and [064]. In the closed position, the recess 22 of the first portion 20 and the second portion 30 define a substantially closed reservoir 50 and the substantially closed reservoir 50 contains a cosmetic product intended for application to a surface. Figs. 1C, 3D, and 4; paragraphs [053], [061], [064], and [069]. The device 10 may further comprise an application member 40 attached to the second portion 20 that is at least partially compressible and configured to be in contact with the impermeable surface. Figs. 1A-1C, 2C, 2D, 3A, 3C, 3D, and 4; paragraphs [054], [057], [061], [063], and [066]. The application member 40 may be at least partially compressed inside the substantially closed reservoir when the device is in the closed position. Figs. 1C, 3D, and 4; paragraphs [054], [055], [057], [061], and [066].

C. Independent Claim 144

The subject matter set forth in claim 32 relates to a device 10 for applying a product comprising a first portion 20 comprising an impermeable surface and defining a recess 22, and a second portion 30 moveable with respect to the first portion 20 so as to selectively place the device 10 in one of a closed position (e.g., Figs. 1C, 2B, and 3D) and an open position (e.g., Figs. 1A, 2D, and 3A). Figs. 1A-1C, 2A-2D, 3A-3D, and 5;

paragraphs [053], [061], and [068]. In the closed position, the recess 22 of the first portion 20 and the second portion 30 define a substantially closed reservoir 50. Figs. 1C, 3D, and 4; paragraphs [053], [061], and [064]. The device 10 may further comprise an application member 40 attached to the second portion 30, the application member 40 being at least partially compressible and configured such that, when the device 10 is in the closed position, the application member 40 is at least partially compressed inside the substantially closed reservoir 50. Figs. 1A-1C, 2C, 2D, 3A, 3C, 3D, and 4; paragraphs [054], [057], [061], and [066]. The reservoir 50 may contain a layer of cosmetic product intended to be applied to a surface and the layer of cosmetic product may contact both the application member 40 and the impermeable surface. Figs. 1B, 1C, 2C, and 3B-3D; paragraphs [053], [057], [061], [063], and [069].

VI. Grounds of Rejection to be Reviewed on Appeal

Claims 1, 3-9, 11-17, 22-51, 60-67, 70-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 144-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,549,835 to Gray ("Gray") in view of U.S. Patent No. 4,519,795 to Hitchcock, Jr. et al. ("Hitchcock").

VII. Argument

A. 35 U.S.C. § 103(a) rejection of independent claims 1, 71, and 144 based on alleged combination of Gray and Hitchcock should be reversed because the Examiner failed to establish *prima facie* case of obviousness under 35 U.S.C. § 103(a)

1. Factual inquiries to determine obviousness

Several basic factual inquiries must be made in order to determine the obviousness or non-obviousness of claims of a patent application under 35 U.S.C. § 103. These factual inquiries, set forth in Graham v. John Deere Co., 383 U.S. 1, 17 (1966), require the Examiner to:

- (1) Determine the scope and content of the prior art;
- (2) Ascertain the differences between the prior art and the claims in issue;
- (3) Resolve the level of ordinary skill in the pertinent art; and
- (4) Evaluate evidence of secondary considerations.

The obviousness or nonobviousness of the claimed invention is then evaluated in view of the results of these inquiries. Id. at 17-18. In making this evaluation, the references must be considered as a whole, and must suggest the desirability and thus the obviousness of making the combination. See M.P.E.P. § 2141. The references must also be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. Id. Additionally, a reasonable expectation of success is the standard with which obviousness is determined. Id. Furthermore, the Examiner bears the initial burden of factually supporting a determination of obviousness in the rejection of the claimed invention. See M.P.E.P. § 2142 (8th Ed. 2001).

Thus, in order to carry the initial burden of establishing a *prima facie* case of obviousness that satisfies the Graham standard, the Examiner must satisfy three basic

criteria. First, the prior art references when combined must teach or suggest all the claim elements. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. See M.P.E.P. § 2143.

Further, the Federal Circuit has emphasized the high burden for establishing a *prima facie* case of obviousness and the requirement for specificity in the evidence necessary to support a *prima facie* case. For example, in In re Kotzab, the Federal Circuit held that “[e]ven where obviousness is based on a single prior art reference teaching all of the individual elements of the claims, there must be a showing of a suggestion or motivation to modify the teachings of that reference. In re Kotzab, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000). Whether this showing is based on an implicit or express showing in the reference, the Examiner “must provide particular findings related thereto.” Id. (citing In re Dembiczak, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999) (requiring a “clear and particular” suggestion to combine or modify prior art references)). In re Kotzab also reiterates the proposition that “broad conclusory statements standing alone are not ‘evidence’.” Id.

Additionally, in In re Lee, the Federal Circuit held that “[t]he factual inquiry whether to combine references must be thorough and searching. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with.” 277 F.3d 1338, 1342, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002). Further, simply because references can be modified or combined is not sufficient basis to establish a *prima facie* case of obvious. In re Mills, 916 F.2d 680, 16

U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. And even if the claimed limitations are within the capabilities of one skilled in the art, such capabilities, by themselves, are not sufficient to establish a *prima facie* case of obviousness. In re Kotzab, 217 F.3d at 1370, 55 U.S.P.Q.2d at 1318; M.P.E.P. § 2143.01.

For the reasons set forth below, the Examiner has failed to satisfy the initial burden of establishing a *prima facie* case of obviousness under 35 U.S.C. § 103(a).

2. There is no suggestion or motivation to combine alleged teachings of Gray and Hitchcock

As discussed in Section V above, Appellant's independent claims 1, 71, and 144 each recite, among other things, a "first portion defining a recess," "a second portion moveable with respect to the first portion so as to selectively place the device in one of a closed position and an open position," and "an application member attached to the second portion."

Gray discloses a method for making sachets having a pocket 5 between a top foil 1 and a bottom foil 4. The method includes placing a measured amount of liquid into a depression in the bottom foil 4 and placing a sponge 10 into the depression. See, e.g., col. 1, lines 63-66, and col. 2, lines 56-58, of Gray. The top foil 1 is then placed over the depression containing the liquid and sponge 10, and the top foil 1 is sealed to the bottom foil 4 around the edges (i.e., shoulder 6) so as to form the sachet having the pocket 5. The sachet is configured to be opened by tearing both the top and bottom foils 1, 4 at a V-notch 11. See, e.g., Fig. 1 and col. 3, lines 22-23, of Gray.

Hitchcock discloses a disposable swab 10 for application of medicament and the like to skin. The disposable swab 10 comprises a flat sheet-like strip 12 and a pad member 14 secured to a foil face 16 of the strip 12. See, e.g., Fig. 1 and col. 3, lines

22-26, of Hitchcock. Opposed terminal portions 20 of the sheet-like strip 12 are folded rearwardly relative to the pad member 14 and pinched by the fingers together to serve as a handle portion, for holding the disposable swab during the swabbing process. See, e.g., Figs. 3 and 4, and col. 3, lines 36-43, of Hitchcock.

In the Office Action at page 3, the Examiner admitted that “Gray does not disclose that the application member 10 is attached to the second portion 1 by bonding.” Nevertheless, the Examiner alleged that Hitchcock “teaches another application device having a pad 14 attached to a plastic strip 12 by an adhesive (col. 2, lines 45-49)” and that, “[t]herefore, it would have been obvious ... to modify the sachet device of Gray by attaching the application member to the second member (top foil 1) in view of the teaching of the Hitchcock Jr. reference in a way such that when opening the sachet, the top foil can be [peeled] off and used as a handle to apply the product on a user without soiling a user’s hand.” Id. Appellant respectfully disagrees with the Examiner’s allegations because, as detailed below, there is no suggestion, motivation, or teaching in either Gray, Hitchcock, or any other source to combine or modify the alleged teachings of Gray in the manner proposed by the Examiner.

a. There is no showing of “clear and particular” suggestion to modify alleged teachings of Gray

As discussed above, the Federal Circuit has repeatedly emphasized that there must be a showing of a “clear and particular” suggestion to combine or modify prior art references and that, regardless of whether that showing is based on an implicit or express showing in the references, the Examiner must provide particular findings related thereto. See, e.g., In re Kortzab, 217 F.3d at 1370; In re Dembiczak, 175 F.3d at 999. In the present case, the Examiner has completely disregarded this standard.

For example, in stating that “it would have been obvious ... to modify the sachet device of Gray ... in view of the teaching of the Hitchcock, Jr. reference in a way such that when opening the sachet, the top foil can be [peeled] off and used as a handle to apply the product on a user without soiling a user’s hand,” the Examiner is essentially alleging that it would have been obvious to try to modify Gray’s device in such a way that Gray’s device can have the alleged features of Hitchcock (i.e., a handle for a user to apply the product without soiling a user’s hand). As is abundantly clear, the Examiner’s completely unsupported allegation is nothing more than a broad conclusory statement, unrelated to any express or implicit teaching of Gray, Hitchcock, or any other source. Furthermore, the Examiner’s obviousness allegation appears to be merely based on impermissible hindsight gleaned from the present application. Consequently, the Examiner’s allegation completely lacks any “clear and particular” or otherwise legally sufficient reason as to why the alleged features of Hitchcock would have been desired by one of ordinary skill in the art considering Gray’s device.

When Gray and Hitchcock are viewed as a whole without such impermissible hindsight, the alleged combination of Gray and Hitchcock would not have been suggested since there would have been no “clear and particular” suggestion to make the Examiner’s proposed combination or modification. For at least this reason alone, the Examiner has failed to carry the initial burden of establishing a prima facie case of obviousness under 35 U.S.C. § 103(a).

b. Contrary to Examiner's allegation, one of ordinary skill in the art would not have been motivated to combine alleged teachings of Gray and Hitchcock

The Examiner alleged that it would have been obvious to one of ordinary skill in the art to modify the sachet device of Gray by attaching the sponge 10 to the top foil 1. Contrary to the Examiner's allegation, however, one of ordinary skill in the art considering Gray's device would not have been motivated to attach the sponge 10 to the top foil 1 because Gray and Hitchcock teach away from doing so.

For example, the sachet of Gray is made from a flexible and thin material so that, when vacuum is applied, it can be deformed to compress the sponge 10 contained therein. However, Hitchcock requires the strip 12, to which its pad 14 is attached, to be sufficiently stiff (i.e., "flat sheet-like strip") so that it can be folded into a structure that serves as a handle, as best shown in Figs. 3 and 4 of Hitchcock. As is abundantly clear, the top foil 1 of Gray, being sufficiently flexible and thin, would not be suitable for serving as a handle. In addition, the top foil 1 of Gray does not include any additional structure to serve as a handle structure. In fact, the mass production advantage (e.g., a continuous process carried out in which pockets are produced by placing two continuous webs of film or foil over one another) disclosed in Gray at col. 2, lines 24-35, teaches away from having such an additional structure. Therefore, one of ordinary skill in the art considering Gray's device would not have been motivated to attach the sponge 10 to the top foil 1, even hypothetically if the alleged teachings of Hitchcock were available to her.

Moreover, attaching the sponge 10 of Gray to its top foil 1 in the manner suggested by the Examiner would have destroyed the usefulness and function of the V-notch 11 of Gray. For example, the top foil 1 and the bottom foil 4 of Gray are sealed

together at the shoulder 6 to form a sachet. To remove the sponge 10 out of the sachet, Gray provides the V-notch 11 to create an opening on a side of the sachet, through which the sponge 10 can be removed (see col. 3, lines 22-23, and Fig. 1 of Gray). If, however, the sachet of Gray were modified to attach the sponge 10 to the top foil 1, the opening created by the V-notch 11 would be insufficient to remove the sponge 10 out of the sachet and would require an additional opening (e.g., separating the top foil 1 and the bottom foil 4 from one another at the shoulder 6) without affecting the structural integrity of the top foil 1 that is to be used as a handle. Thus, attaching the sponge 10 to the top foil 1 in the sachet of Gray would necessarily destroy the usefulness and function of the V-notch 11. Furthermore, tearing the sachet along the V-notch 11 would affect the structural integrity of the top foil 1, which is to be used as an applicator handle, and would render the V-notch 11 completely useless, thereby destroying the teachings of Gray.

Therefore, one of ordinary skill in the art would not have been motivated to combine alleged teachings of Gray and Hitchcock.

For at least the reasons set forth above, the Examiner has failed to carry the initial burden of establishing a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Thus, the Examiner's rejection of independent claims 1, 71, and 144 under 35 U.S.C. § 103(a) based on the alleged combination of Gray and Hitchcock is in error and should be reversed.

B. Claims 3-9, 11-17, 22-51, 60-67, 70, 72-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 145-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 are patentable over the alleged combination of Gray and Hitchcock at least by virtue of their respective dependencies from independent claims 1, 71, and 144

Each of dependent claims 3-9, 11-17, 22-51, 60-67, 70, 72-83, 85-91, 96-108, 110, 112-116, 118-121, 123, 132, 133, 135-141, 145-156, 158-164, 169-182, 184-192, 194, 203, 204, and 206-212 depends, either directly or indirectly, from independent claim 1, 71, or 144. As discussed above, independent claims 1, 71, and 144 are patentable over the alleged combination of Gray and Hitchcock. Thus, at least by virtue of their dependencies from allowable independent claims 1, 71, and 144, the above-listed dependent claims should also be patentable over Gray and Hitchcock.


C. Conclusion

For the reasons given above, all of the pending claims are patentable over Gray and Hitchcock. The Board is therefore respectfully requested to reverse the outstanding rejection under 35 U.S.C. § 103(a), so that those pending claims may be allowed.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due which are not enclosed herewith, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,
FINNEGAN, HENDERSON, FARABOW,
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Dated: October 2, 2006

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VIII. Claims Appendix

1. A device for applying a product, the device comprising:
a first portion defining a recess;
a second portion moveable with respect to the first portion so as to selectively place the device in one of a closed position and an open position, wherein the first portion and the second portion define a substantially closed reservoir when the device is in the closed position; and
an application member attached to the second portion, the application member being at least partially compressible and configured such that, when the device is in the closed position, the application member is at least partially compressed inside the substantially closed reservoir and, when the device is moved from the closed position to the open position, the application member becomes substantially uncompressed,
wherein the application member is configured so that when the application member is uncompressed, the application member is capable of being loaded with substantially all of an amount of product that the device is capable of containing.
3. The device of claim 1, wherein the application member is attached to the second portion by at least one of bonding, welding and clipping.
4. The device of claim 1, wherein the application member comprises a compressible porous material.
5. The device of claim 4, wherein the application member is made of at least one of an open-cell foam, a semi-open-cell foam, a felt, and a frit.

6. The device of claim 4, wherein the application member is made from a material chosen from polyurethanes, polyesters, polyethers, polyvinyl chlorides, and ethylene vinyl acetates.

7. The device of claim 4, wherein the porous material is one of hydrophilic and lipophilic.

8. The device of claim 1, wherein the application member comprises an additive capable of absorbing at least one of water and oil.

9. The device of claim 1, wherein the application member comprises a preservative.

11. The device of claim 1, wherein the substantially closed reservoir comprises the recess and at least a part of the second portion.

12. The device of claim 1, wherein the first portion comprises a housing portion defining the recess.

13. The device of claim 1, wherein the first portion comprises at least one of a metallic material, a metalloplastic complex, and a thermoplastic material.

14. The device of claim 13, wherein the metallic material comprises aluminum.
15. The device of claim 13, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, polyvinyl chlorides, polyacrylates, and polyamides.
16. The device of claim 1, wherein the first portion is made by one of pressing, thermoforming, and injection molding.
17. The device of claim 1, wherein the second portion is attached to the first portion.
22. The device of claim 1, wherein the second portion comprises a film seal formed of at least one layer of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.
23. The device of claim 22, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.
24. The device of claim 22, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

25. The device of claim 22, wherein the application member is attached to the second portion.

26. The device of claim 25, wherein the film seal has a flexibility such that it is configured to deform with the application member during application of product to a surface.

27. The device of claim 22, wherein the film seal is attached to the first portion by one of hot bonding, cold bonding, and welding.

28. The device of claim 22, wherein the film seal is attached to the first portion by one of a line of welding and a line of adhesive that substantially continuously surrounds the application member.

29. The device of claim 1, wherein the first portion and the second portion each comprise a sheet.

30. The device of claim 29, wherein each sheet comprises at least one layer made of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

31. The device of claim 30, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

32. The device of claim 30, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

33. The device of claim 29, wherein the sheets are superposed and attached together along their respective peripheral regions.

34. The device of claim 33, wherein the sheets form a sachet.

35. The device of claim 33, wherein the device is placed in the open position by separating the first portion and the second portion from one another.

36. The device of claim 1, further comprising a product contained in the device.

37. The device of claim 36, wherein the product is contained in the substantially closed reservoir when the device is in the closed position.

38. The device of claim 36, wherein the product is chosen from a make-up product and a care product.

39. The device of claim 38, wherein the product is a cosmetic product.

40. The device of claim 36, wherein the product is intended for application to at least one of skin, hair, a fingernail, and a toenail.

41. The device of claim 36, wherein the product comprises one of a liquid, a gel, a cream, and a powder.

42. An application system comprising:
a plurality of the devices of claim 1.

43. The system of claim 42, wherein the plurality of devices are removably joined together.

44. The system of claim 43, wherein the plurality of devices are joined together by at least one frangible portion.

45. The system of claim 42, wherein each of the plurality of devices contains a product intended for application to a surface.

46. The system of claim 45, wherein each of the plurality of devices contains differing products.

47. The system of claim 45, wherein each of the plurality of devices contains substantially the same product.

48. The system of claim 45, wherein the product is intended for application to one of hair, skin, a fingernail, and a toenail.

49. The system of claim 45, wherein the product is chosen from a make-up product and a care product.

50. The system of claim 49, wherein the product is a cosmetic product.

51. The system of claim 45, wherein the product comprises one of a liquid, a gel, a cream, and a powder.

60. A method for applying a product to a surface, the method comprising:
providing the device of claim 1, wherein the device contains a product intended to be applied to a surface;
moving the device from the closed position to the open position; and
placing the application member in contact with the surface so as to apply product loaded on the application member to the surface.

61. The method of claim 60, wherein the product is chosen from a make-up product and a care product.

62. The method of claim 61, wherein the product is a cosmetic product.

63. The method of claim 60, wherein the product comprises one of a liquid, a gel, a cream, and a powder.

64. The method of claim 60, wherein the placing of the application member in contact with the surface comprises placing the application member in contact with one of hair, skin, a fingernail, and a toenail.

65. The method of claim 60, wherein the placing of the application member in contact with the surface comprises applying substantially all of the product loaded on the application member to the surface.

66. The method of claim 60, further comprising at least partially filling the device with the product.

67. The method of claim 66, wherein the filling of the device with the product is performed by other than a user of the device.

70. The device of claim 1, wherein the application member is at least partially absorbent.

71. A device for applying a product, the device comprising:
a first portion comprising an impermeable surface, the first portion defining a recess;
a second portion moveable with respect to the first portion so as to selectively place the device in one of a closed position and an open position, wherein, in the closed position, the recess of the first portion and the second portion define a substantially closed reservoir, the substantially closed reservoir containing a cosmetic product intended for application to a surface; and
an application member attached to the second portion, the application member being at least partially compressible and configured to be in contact with the impermeable surface and at least partially compressed inside the substantially closed reservoir when the device is in the closed position.

72. The device of claim 71, wherein, when the device is moved from the closed position to the open position, the application member becomes substantially uncompressed.

73. The device of claim 71, wherein the application member is configured to absorb at least some of the product contained in the reservoir.

74. The device of claim 73, wherein the application member is configured to absorb substantially all of the product contained in the reservoir.

75. The device of claim 74, wherein the application member is configured to absorb at least some of the product contained in the reservoir when the device is in the closed position, and wherein the application member is further configured to absorb substantially any remaining product in the reservoir when the device is moved from the closed position to the open position.

76. The device of claim 75, wherein the application member is configured to absorb the remaining product via expansion of the application member from the at least partially compressed configuration to a substantially uncompressed configuration.

77. The device of claim 71, wherein the application member is attached to the second portion by at least one of bonding, welding or clipping.

78. The device of claim 71, wherein the application member comprises a compressible porous material.

79. The device of claim 78, wherein the application member is made of at least one of an open-cell foam, a semi-open-cell foam, a felt, and a frit.

80. The device of claim 78, wherein the application member is made from a material chosen from polyurethanes, polyesters, polyethers, polyvinyl chlorides, and ethylene vinyl acetates.

81. The device of claim 78, wherein the porous material is one of hydrophilic and lipophilic.

82. The device of claim 71, wherein the application member comprises an additive capable of absorbing at least one of water and oil.

83. The device of claim 71, wherein the application member comprises a preservative.

85. The device of claim 71, wherein the substantially closed reservoir comprises the recess and at least a part of the second portion.

86. The device of claim 71, wherein the first portion comprises a housing portion defining the recess.

87. The device of claim 71, wherein the first portion is made of at least one of a metallic material, a metalloplastic complex, and a thermoplastic material.

88. The device of claim 87, wherein the metallic material comprises aluminum.

89. The device of claim 87, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, polyvinyl chlorides, polyacrylates, and polyamides.

90. The device of claim 71, wherein the first portion is made by one of pressing, thermoforming, and injection molding.

91. The device of claim 71, wherein the second portion is attached to the first portion.

96. The device of claim 71, wherein the second portion comprises a film seal formed of at least one layer of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

97. The device of claim 96, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

98. The device of claim 96, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

99. The device of claim 96, wherein the film seal has a flexibility such that it is configured to deform with the application member during application of product to a surface.

100. The device of claim 96, wherein the film seal is attached to the first portion by one of hot bonding, cold bonding, and welding.

101. The device of claim 96, wherein the film seal is attached to the first portion by one of a line of welding and a line of adhesive that substantially continuously surrounds the application member.

102. The device of claim 71, wherein the first portion and the second portion each comprise a sheet.

103. The device of claim 102, wherein each sheet comprises at least one layer made of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

104. The device of claim 103, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

105. The device of claim 104, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

106. The device of claim 102, wherein the sheets are superposed and attached together along their respective peripheral regions.

107. The device of claim 106, wherein the sheets form a sachet.

108. The device of claim 106, wherein the device is placed in the open position by separating the first portion and the second portion from one another.

110. The device of claim 71, wherein the cosmetic product is chosen from a make-up product and a care product.

112. The device of claim 71, wherein the cosmetic product is intended for application to at least one of skin, hair, a fingernail, and a toenail.

113. The device of claim 71, wherein the cosmetic product comprises one of a liquid, a gel, a cream, and a powder.

114. An application system comprising:
a plurality of the devices of claim 71.

115. The system of claim 114, wherein the plurality of devices are removably joined together.

116. The system of claim 115, wherein the plurality of devices are joined together by at least one frangible portion.

118. The system of claim 114, wherein each of the devices contains a differing cosmetic product.

119. The system of claim 114, wherein each of the devices contains substantially the same cosmetic product.

120. The system of claim 114, wherein the cosmetic product is intended for application to one of hair, skin, a fingernail, and a toenail.

121. The system of claim 114, wherein the cosmetic product is chosen from a make-up product and a care product.

123. The system of claim 114, wherein the cosmetic product comprises one of a liquid, a gel, a cream, and a powder.

132. A method for applying a product to a surface, the method comprising:
providing the device of claim 71;

moving the device from the closed position to the open position; and
placing the application member in contact with the surface so as to apply at least some of the product to the surface.

133. The method of claim 132, wherein the product is chosen from a make-up product and a care product.

135. The method of claim 132, wherein the product comprises one of a liquid, a gel, a cream, and a powder.

136. The method of claim 132, wherein the placing of the application member in contact with the surface comprises placing the application member in contact with one of hair, skin, a fingernail, and a toenail.

137. The method of claim 132, wherein the placing of the application member in contact with the surface comprises applying substantially all of the product contained in the reservoir to the surface.

138. The method of claim 132, wherein the moving of the device from the closed position to the open position comprises expanding the application member from the at least partially compressed configuration to a substantially uncompressed configuration.

139. The method of claim 138, wherein the application member is configured to absorb at least some of the product disposed in the reservoir when the device is in the closed position, and wherein the expanding of the application member permits the application member to absorb substantially all of any remaining of product in the reservoir.

140. The method of claim 132, further comprising at least partially filling the reservoir with the product.

141. The method of claim 140, wherein the filling of the reservoir with the product is performed by other than a user of the device.

144. A device for applying a product, the device comprising:
a first portion comprising an impermeable surface, the first portion defining a recess;
a second portion moveable with respect to the first portion so as to selectively place the device in one of a closed position and an open position, wherein, in the closed position, the recess of the first portion and the second portion define a substantially closed reservoir; and
an application member attached to the second portion, the application member being at least partially compressible and configured such that, when the device is in the closed position, the application member is at least partially compressed inside the substantially closed reservoir,

wherein the reservoir contains a layer of cosmetic product intended to be applied to a surface, the layer of cosmetic product contacting both the application member and the impermeable surface.

145. The device of claim 144, wherein, when the device is moved from the closed position to the open position, the application member becomes substantially uncompressed.

146. The device of claim 144, wherein the application member is configured to absorb at least some of the product contained in the reservoir.

147. The device of claim 146, wherein the application member is configured to absorb substantially all of the product contained in the reservoir.

148. The device of claim 147, wherein the application member is configured to absorb at least some of the product contained in the reservoir when the device is in the closed position, and wherein the application member is further configured to absorb substantially any remaining product contained in the reservoir when the device is moved from the closed position to the open position.

149. The device of claim 148, wherein the application member is configured to absorb the remaining product via expansion of the application member from the at least partially compressed configuration to a substantially uncompressed configuration.

150. The device of claim 144, wherein the application member is attached to the second portion by at least one of bonding, welding, and clipping.

151. The device of claim 144, wherein the application member comprises a compressible porous material.

152. The device of claim 151, wherein the application member is made of at least one of an open-cell foam, a semi-open-cell foam, a felt, and a frit.

153. The device of claim 151, wherein the application member is made from a material chosen from polyurethanes, polyesters, polyethers, polyvinyl chlorides, and ethylene vinyl acetates.

154. The device of claim 151, wherein the porous material is one of hydrophilic and lipophilic.

155. The device of claim 151, wherein the application member comprises an additive capable of absorbing at least one of water and oil.

156. The device of claim 151, wherein the application member comprises a preservative.

158. The device of claim 144, wherein the substantially closed reservoir comprises the recess and at least a part of the second portion.

159. The device of claim 144, wherein the first portion comprises a housing portion defining the recess.

160. The device of claim 144, wherein the first portion is made of at least one of a metallic material, a metalloplastic complex, and a thermoplastic material.

161. The device of claim 160, wherein the metallic material comprises aluminum.

162. The device of claim 160, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, polyvinyl chlorides, polyacrylates, and polyamides.

163. The device of claim 144, wherein the first portion is made by one of pressing, thermoforming, and injection molding.

164. The device of claim 144, wherein the second portion is attached to the first portion.

169. The device of claim 144, wherein the second portion comprises a film seal formed of at least one layer of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

170. The device of claim 169, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

171. The device of claim 169, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

172. The device of claim 169, wherein the film seal has a flexibility such that it is configured to deform with the application member during application of product to a surface.

173. The device of claim 169, wherein the film seal is attached to the first portion by one of hot bonding, cold bonding, and welding.

174. The device of claim 169, wherein the film seal is attached to the first portion by one of a line of welding and a line of adhesive that substantially continuously surrounds the application member.

175. The device of claim 144, wherein the first portion and the second portion each comprise a sheet.

176. The device of claim 175, wherein each sheet comprises at least one layer made of at least one of a thermoplastic material, a metallic material, and a metalloplastic complex.

177. The device of claim 176, wherein the thermoplastic material is chosen from polyethylenes, polypropylenes, polyethylene terephthalates, and polyvinyl chlorides.

178. The device of claim 177, wherein the metallic material is chosen from aluminums, aluminum alloys, and brasses.

179. The device of claim 175, wherein the sheets are superposed and attached together along their respective peripheral regions.

180. The device of claim 179, wherein the sheets form a sachet.

181. The device of claim 179, wherein the device is placed in the open position by separating the first portion and the second portion from one another.

182. The device of claim 144, wherein the cosmetic product is chosen from a make-up product and a care product.

184. The device of claim 144, wherein the cosmetic product is intended for application to at least one of skin, hair, a fingernail, and a toenail.

185. The device of claim 144, wherein the cosmetic product comprises one of a liquid, a gel, a cream, and a powder.

186. An application system comprising:
a plurality of the devices of claim 144.

187. The system of claim 186, wherein the plurality of devices are removably joined together.

188. The system of claim 187, wherein the plurality of devices are joined together by at least one frangible portion.

189. The system of claim 186, wherein each of the devices contains a differing cosmetic product.

190. The system of claim 186, wherein each of the devices contains substantially the same cosmetic product.

191. The system of claim 186, wherein the cosmetic product is intended for application to one of hair, skin, a fingernail, and a toenail.

192. The system of claim 186, wherein the cosmetic product is chosen from a make-up product and a care product.

194. The system of claim 186, wherein the cosmetic product comprises one of a liquid, a gel, a cream, and a powder.

203. A method for applying a product to a surface, the method comprising:
providing the device of claim 144;
moving the device from the closed position to the open position; and
placing the application member in contact with the surface so as to apply product to the surface.

204. The method of claim 203, wherein the product is chosen from a makeup product and a care product.

206. The method of claim 203, wherein the product comprises one of a liquid, a gel, a cream, and a powder.

207. The method of claim 203, wherein the placing of the application member in contact with the surface comprises placing the application member in contact with one of hair, skin, a fingernail, and a toenail.

208. The method of claim 203, wherein the placing of the application member in contact with the surface comprises applying substantially all of the product disposed in the reservoir to the surface.

209. The method of claim 203, wherein the moving of the device from the closed position to the open position comprises expanding the application member from the at least partially compressed configuration to a substantially uncompressed configuration.

210. The method of claim 209, wherein the application member is configured to absorb at least some of the product disposed in the reservoir when the device is in the closed position, and wherein the expanding of the application member permits the application member to absorb substantially all of any remaining amount of product in the reservoir.

211. The method of claim 203, further comprising at least partially filling the reservoir with the product.

212. The method of claim 211, wherein the filling of the reservoir with the product is performed by other than a user of the device.

IX. **Evidence Appendix**

None

X. **Related Proceedings Appendix**

None